IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1088 OF 2004

Arun Kashinath Naravane ...Appellant

Vs.

Government of Maharashtra & Anr. ...Respondents

Ms Swati Borwankar i/b Mr.W.W.Vishanpayan for the Appellant
Ms Geeta Mulekar,A.G.P. for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 4,2005.

P.C.:

1. Heard Advocate for the Appellant. The Appellant is the original Plaintiff. The Plaintiff filed a suit for declaration that he has become owner of the suit agricultural land by adverse possession. A Notice of Motion was taken out by the Appellant in the said suit praying for injunction restraining the Respondents i.e. State of Maharashtra and the Mumbai Municipal Corporation from interfering with his alleged possession over the suit land. The Trial Court by impugned order declined to grant injunction and Notice of Motion has been dismissed.

2. In paragraph No.1 of the plaint, the Appellant is claiming to be in possession of the suit land admeasuring 6550 sq.mtrs. out of land C.T.S.No.1110. In paragraph No. 6.1 the Appellant has averred that a large piece of land bearing Survey No.164 Hissa No.1/1A (part) of Village Kandivali, Taluka Borivali, Mumbai was reserved as a forest. A portion admeasuring 18 acres and 12 gunthas carved out from

the said land was granted to 'Shri Ramkrishna Mandal'. It is stated in paragraph No.6.3 that father of Appellant was the founder of the said 'Shri Ramkrishna Mandal' and the said portion admeasuring 18 acres and 12 gunthas was in possession of the father of the Appellant. In paragraph No.6.5 it is alleged that father of the Appellant pursued agricultural and horticultural activities in the said land. In paragraph No.6.6 it is stated that after demise of father of the Appellant in February 1977, the Appellant continued the said activities. He was required to move out of the Trust and as per the arrangement between him and the trustees, it was agreed that the Appellant will not interfere with the educational activities of the trust and will restrict himself to the agricultural land pursuing the agricultural and horticultural activities.

3. In paragraph No.6.10 the Appellant has come out with a case that part of the suit land is being used for running a school by the Trust by name 'Shishu Vikas Trust'. He has stated that he started the school in a a farm house in his possession and he is the managing trustee of the said trust.

4. From the documents annexed to the Memorandum of Appeal it appears that the said 'Shishu Vikas Trust' is an independent Trust which is duly registered under the Bombay Public Trusts Act, 1950. The Plaintiff claims to be a managing trustee of the said trust.

5. On plain reading of the averments made in the plaint it appears that the suit land was allotted to 'Shri Ramkrishna Shikshan Mandal' of which the father of the Appellant was a founder and a Trustee and the Appellant is claiming to be in possession of the part of the said land. The trust 'Shri Ramkrishna Shikshan Mandal' is not a party to the suit. Simlarly, another trust 'Shishu Vikas Trust' of which the Appellant is claiming to be the managing Trustee is also not a party to the suit. When the prayer made by the Appellant is for declaration that he has perfected his title to the suit land by adverse possession, the said Trusts were obviously necessary and proper parties.

6. The learned Trial Judge has noted that if 'Shishu Vikas Trust' is in possession of the part of the property and if the Appellant is managing Trustee thereof, the suit should have been filed on behalf of the said Trust.

7. In the plaint necessary ingredients of plea of adverse possession are not found and therefore, prima facie case regarding pefection of title by adverse possession could not be established. The order of the learned Trial Judge is a discretionary order. In view of the averments made in the plaint no fault can be found with the prima facie findings of the Trial Court. Hence, Appeal is dismissed. No order as to costs. It is made clear that the findings which are recorded

by the Trial Court as well as the findings of this Court are prima facie findings recorded for consideration of prayer for interim relief. The learned Trial Judge will hear and decide the suit finally without being influenced by the said prima facie findings.

Judge.